

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

CASE NO.: 9:24-cv-80760-XXXX

DAVID A. PHILLIPS, JOSEPH J.
AZZATA, JOSEPH T. AZZATA, and
other similarly situated individuals,

Plaintiff(s),

vs.

PRIME MEDICAL SUPPLIES, INC.,
a Florida Corporation, and,
LOUIS SITARAS, individually.
JLMS HOLDINGS, LLC, a Florida
Corporation, and SALVTORE LANTIERI,

**PLAINTIFFS, DAVID A. PHILLIPS, JOSEPH J. AZZATA, JOSEPH T.
AZZATA'S MOTION FOR ENTRY OF DEFAULT JUDGMENT UNDER
FED. R. CIV. P. 55(b)(1) WITH INCORPORATED
MEMORANDUM OF LAW IN SUPPORT**

Plaintiffs, DAVID A. PHILLIPS, JOSEPH J. AZZATA, JOSEPH T. AZZATA
(hereinafter "PLAINTIFFS") hereby request that the Court enter default judgment against
Defendant, JLMS HOLDINGS, LLC ("JLMS") pursuant to Fed. R. Civ. P. 55(b)(1), and
in support of its request, Plaintiffs aver the following:

1. Plaintiffs filed their Complaint against JLMS on June 14th, 2024. (See DE No. 1).
2. On July 16th, 2024, process server Douglas Nelson properly served JLMS by personally serving him with a copy of the Complaint, summons, and all other forms required by this Court. (See DE No. 11).

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3. Pursuant to Fed. R. Civ. P. 12(a)(1)(A)(i), JLMS's answer or response to the Complaint was due on or before August 6th, 2024.

4. On August 9th, 2024, after JLMS failed to file an Answer or Responsive Pleading, Plaintiffs submitted their Request for Entry of Default pursuant to Fed. R. Civ. P. 55(a) requesting that the Clerk enter a default against JLMS. (See DE No. 17).

5. On August 9th, 2024, this Court entered Clerk's default against JLMS for failure to plead or otherwise defend as required by the Federal Rules of Civil Procedure. (See ECF No. 20).

6. On August 9th, 2024, Plaintiffs sent the Motion for Clerk's Default and Clerk's Default to the last known address for JLMS. (See Exhibit 1. Plaintiffs have received no response to this mailing.)

7. As of the filing of this Motion, JLMS has failed to plead, or otherwise defend itself in this litigation.

8. No counsel has contacted Plaintiffs purporting to represent JLMS.

9. As a result of the default entered against JLMS, JLMS has admitted to a violation of FLSA provisions concerning prompt, regular payment of wages Plaintiffs. See generally *Nishimatsu Constr. Co. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir.1975) (by defaulting, a defendant "admits the plaintiff's well-pleaded allegations of fact, is concluded on those facts by the judgment, and is barred from contesting on appeal the facts thus established."); See also *United States v. Clesen*, No. 2:12- CV-408-FTM-38, 2013 WL 2712085, at *2 (M.D. Fla. June 12, 2013)

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(“[J]udgment is proper in this matter as Defendants have failed to respond to the Complaint in this matter after proper service and Plaintiff's Complaint contains well-pleaded allegations of fact, which are deemed admitted by the Defendants for failing to respond.”).

10. JLMS is now liable to Plaintiffs for all unpaid wages and related charges.

11. Plaintiffs' claims against JLMS is for a sum certain or a sum that, by computation, can be made certain. JLMS is liable to Plaintiffs in the amount of \$205,206.26 for the aforementioned charges. (See Exhibit 2. Plaintiffs, DAVID A. PHILLIPS, JOSPEPH J. AZZATA, JOSEPH T. AZZATA's Affidavits.)

12. The amount of the judgment to be entered against JLMS, as averred in the Plaintiffs, DAVID A. PHILLIPS, JOSPEPH J. AZZATA, JOSEPH T. AZZATA Declarations, is just due and owing, and the costs sought to be taxed have been or will necessarily be incurred in the action.

WHEREFORE, Plaintiffs, DAVID A. PHILLIPS, JOSPEPH J. AZZATA, JOSEPH T. AZZATA respectfully requests the Court to enter a default judgment against defendant JLMS HOLDINGS, LLC and in favor of DAVID A. PHILLIPS, JOSPEPH J. AZZATA, JOSEPH T. AZZATA pursuant to Rule 55(b)(1) in the amount of \$205,206.26 plus attorney's fees and costs.

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AFFIDAVIT

We, Steven L. Ehrlich and Franklin A. Jara, do hereby certify that the statements and allegations set forth in the foregoing Motion are true and accurate to the best of our knowledge and belief.

Respectfully submitted,

COLE, SCOTT & KISSANE, P.A.
Counsel for Plaintiffs, DAVID A. PHILLIPS,
JOSPEPH J. AZZATA, JOSEPH T. AZZATA, and
other similarly situated individuals,
Cole, Scott & Kissane Building
9150 South Dadeland Boulevard, Suite 1400
P.O. Box 569015
Miami, Florida 33256
Telephone (305) 350-5300
Facsimile (305) 373-2294
Primary e-mail: steven.ehrlich@csklegal.com
Secondary e-mail: franklin.jara@csklegal.com
Alternate e-mail: barbara.garcia@csklegal.com
paola.valdes@cskelgal.com

By: s/ Steven L. Ehrlich

STEVEN L. ERHLICH
Florida Bar No: 91409
FRANKLIN A. JARA
Florida Bar No.: 636681

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of August, 2024, a true and correct copy of the foregoing has been furnished by electronic filing with the Clerk of the court via CM/ECF, which will send notice of electronic filing to all counsel of record.

COLE, SCOTT & KISSANE, P.A.
*Counsel for Plaintiffs, DAVID A. PHILLIPS,
JOSEPH J. AZZATA, JOSEPH T. AZZATA, and
other similarly situated individuals,*
Cole, Scott & Kissane Building
9150 South Dadeland Boulevard, Suite 1400
P.O. Box 569015
Miami, Florida 33256
Telephone (305) 350-5300
Facsimile (305) 373-2294
Primary e-mail: steven.ehrlich@csklegal.com
Secondary e-mail: franklin.jara@csklegal.com
Alternate e-mail: barbara.garcia@csklegal.com
Alternate email: paola.valdes@cskelgal.com

By: s/ Steven L. Ehrlich

STEVEN L. ERHLICH
Florida Bar No: 91409
FRANKLIN JARA
Florida Bar No.: 636681

COLE, SCOTT & KISSANE, P.A.

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